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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/507,336	02/18/2000	Scott C. Anderson	003-005-CP	7956
55962	7590	06/29/2007		
SJM/AFD-WILEY			EXAMINER	
14901 DEVEAU PLACE			SHAY, DAVID M	
MINNETONKA, MN 55345-2126				
			ART UNIT	PAPER NUMBER
			3735	
			MAIL DATE	DELIVERY MODE
			06/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/507,336

Applicant(s)

ANDERSON, SCOTT

Examiner

david shay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on March 23, 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-36, 38, 40, 41 and 75-79 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-36, 38, 40, 41 and 75-79 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 23, 2007 has been entered.

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 68-73 been renumbered 74-79. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant argues that the newly submitted claims read over the rejections involving Rittman, III et al because the ablating step is distinct from the temperature measuring step. While this description of the claims as having distinct steps is not inaccurate, this does not define over the actual process occurring during the operation of the device of Rittman, III et al. In the operation of the Rittman, III et al device (and the Swanson et al device as well), when energy is first applied, it does not instantaneously begin to ablate tissue, the tissue must reach the ablation temperature. Thus for a finite amount of time, a "nonablating quantity of energy" is applied to the tissue, while the temperature is measured, while this non-ablating quantity is applied, the temperature is being measured and the tissue is being characterized as not ablated, and subsequently, when the energy quantity increases to the point where ablation is occurring, the

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ablation step occurs as directed by the determining step. The examiner respectfully suggests that, the contents of the originally filed disclosure permitting, that applicant insert language either indicating the energy applied to the tissue is stopped during the interval between that the determining step occurs or somehow characterize the non-ablating and ablating energies as fundamentally different, either in frequency or character (e.g. one being heating, the other being cooling) in order to overcome this rejection. While the examiner cannot be certain that such language will define patentable subject matter in general, it will define iover the art currently applied to the claims.

The obviousness type double patenting rejections have been withdrawn in view of the terminal disclaimer filed March 23, 2007.

Claims 34-38, 40, and 75-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rittman, III et al in combination with Swanson et al. Rittman, III et al teaches a method such as claimed except epicardial placement and activation of no more than half the ablating elements. Swanson et al teaches the desirability of ablating on the epicardium and that less than half the total number of electrodes can be used. It would have been obvious to, the artisan of ordinary skill to employ the method of Swanson et al in the method of Rittman, III et al, since the method of Swanson et al is applicable to both intravascular and extravascular treatments, thus producing a method such as claimed.

Claims 41 and 73 are rejected under 35 UCS.C. 103(a) as being unpatentable over Rittman, III et al in combination with Swanson et al as applied to claims 34-38 and 40 above, and further in view of Ben Hain et al. Ben Hain teaches drawing tissue into a suction well prior to ablation. It would have been obvious to employ the step of drawing the tissue desired to be

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ablated into suction surrounding the ablating elements since this allows the catheter to remain stable while the tissue is ablated, thus producing a method such as claimed.

Applicant's arguments filed March 23, 2007 have been fully considered but they are not persuasive. The arguments are not persuasive for the reasons set forth above.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on Monday, Tuesday, Wednesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "David M. Shay".

DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330